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DEPARTMENT FOR INL/C/P, CA/VO/L/C, WHA/CEN, WHA/PPC

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TAGS: [CVIS](#) [PREL](#) [PGOV](#) [KCOR](#) [KCRM](#) [EFIN](#) [NU](#)
SUBJECT: VISAS DONKEY: REQUEST FOR CORRUPTION 212(F) VISA
INELIGIBILITY FINDING--TOMAS EDUARDO CORTEZ MENDOZA

REF: A. 04 STATE 45499
[1](#)B. 04 MANAGUA 1349
[1](#)C. MANAGUA 36
[1](#)D. 04 MANAGUA 2740

Classified By: AMBASSADOR PAUL TRIVELLI. REASONS 1.4 (B,D).

[1](#)1. (C) SUMMARY AND ACTION REQUEST: Embassy is seeking a security advisory opinion under section 212 (f) of the Immigration and Nationality Act, proclamation 7750, suspending the entry into the United States of Tomas Eduardo Cortez Mendoza, born in Nicaragua on November 30, 1971. Cortez is currently a Sandinista (FSLN) judge in Managua's seventh criminal court. He is a protégé of corrupt Supreme Court Justice Rafael Solis, and was appointed to his current position thanks to his patronage. Solis, Cortez and other Sandinista (FSLN) judges use their positions to benefit FSLN leader Daniel Ortega and his party's political and economic interests.

[1](#)2. (C) With the FSLN controlling an overwhelming majority of the judiciary via corrupt judges like Cortez, the Sandinista party is virtually assured of winning any legal dispute, can threaten opponents with incarceration and conviction on trumped up charges, and can fill party coffers by extorting legitimate businesses and allowing international drug and arms traffickers and other criminals to go free in return for bribes. Judge Cortez has a long record of disregarding the facts and the law, and has been implicated in one judicial corruption scandal after another in recent years. His corrupt acts have made banner headlines, and his involvement in freeing international drug traffickers and corrupt former government officials is increasing. He is also the FSLN's "judge of choice" for all criminal matters; he has regularly absolved prominent Sandinistas accused of crimes and has brought politically-motivated criminal charges against those who oppose the FSLN.

[1](#)3. (C) Although the Attorney General's office (Procuraduria), the office of the National Prosecutor (Fiscalia), and others have called for multiple investigations of Judge Cortez's corrupt acts, no investigation has ever taken place, thanks to the fact that Judge Cortez enjoys the protection of Supreme Court (CSJ) magistrate Solis and the FSLN, who have blocked all efforts to launch an investigation. As long as Judge Cortez enjoys their protection, he is effectively untouchable in Nicaragua. The ongoing political and financial corruption of which Cortez has been an integral part has caused enormous damage for U.S. national interests in the stability of democratic institutions in Nicaragua (including the judiciary), U.S. foreign assistance goals, and the international economic activities of U.S. businesses.

[1](#)4. (C) Because he remains both one of the chief proxies of

Rafael Solis and his corrupt cronies in the Supreme Court and the FSLN, and one of the FSLN's primary means of filling party coffers, Cortez continues to damage all of these national interests, and to sustain Ortega's stranglehold on the judiciary and the country as a whole. Moreover, Cortez's involvement in drug trafficking and official corruption cases has all played out in public. The spectacle has made more obvious than ever that justice can be bought and sold in Nicaragua, and that those involved are untouchable so long as they enjoy the political protection of Daniel Ortega or rival party leader Arnoldo Aleman. Unfortunately, numerous judges at all levels, handpicked for the bench because of their lack of ethics and judicial independence, are emulating Cortez's example, severely undermining the entire system of justice and the U.S. and Nicaraguan fight against international drug trafficking. For all of these reasons, post recommends that the Department make a 212(f) finding against Tomas Eduardo Cortez Mendoza and that no (rpt no) further travel to the United States be allowed. The following provides information requested in reftel A, paragraph 16. END SUMMARY AND ACTION REQUEST.

CORTEZ A PROXY OF CORRUPT SUPREME COURT JUSTICE RAFAEL SOLIS
AND FSLN JUDICIAL "FIXER" LENIN CERNA

15. (C) As the Department's recent annual Human Rights Reports on Nicaragua have noted, almost all judges appointed to the country's Supreme Court (CSJ) owe their loyalty to either Aleman or Ortega, and their decisions on all sensitive cases are blatantly partisan and political. Once loyalists of Aleman or Ortega are appointed to the CSJ, they are then responsible for appointing and promoting lower court judges, and they fill the ranks of the judiciary with corrupt followers such as Tomas Cortez. In 2001, Judge Cortez was

promoted from judicial legal assistant to full-time criminal court judge thanks to the patronage of CSJ magistrate Rafael Solis, whose corruption is well known and whose visa was revoked under 212(f) in 2004 (reftel B).

16. (C) Like Solis, Cortez both serves as an instrument of the FSLN on politically sensitive issues, and exploits his office to sow corruption in the judiciary, "fixing" judicial decisions in return for bribes for his personal benefit and to fill FSLN coffers for use at election time. According to credible Embassy sources, the FSLN's use of the judiciary to obtain money from international drug traffickers in return for having Sandinista judges set them free is organized by Lenin Cerna, the 1980s head of the Sandinista regime's State Security Directorate, with the approval of Daniel Ortega. Although post cannot document the entire money trail in such cases, credible contacts state that using the judiciary to free corrupt ex-officials and international arms and drug traffickers is one of the FSLN's primary sources of income. Post also has credible reports that Daniel Ortega's proxies are negotiating agreements with international drug traffickers whereby traffickers will be allowed to operate unimpeded on the country's Atlantic Coast if Ortega is elected president in 2006.

17. (C) Cortez maintains a strong personal connection to the FSLN "family", as he is married to Lenina Cerna, the niece of Lenin Cerna, the architect of the entire FSLN system of judicial corruption, bribes and campaign finance. Although such a family connection to the leaders of a major political party obviously constitutes a conflict of interest in cases concerning the party and would lead an honest judge to recuse himself from such cases, Cortez has never done so. In practice, this personal connection makes Cortez one of the FSLN's most reliable judges and the party does all it can to ensure that Cortez hears all politically sensitive cases involving both FSLN leaders and their opponents.

CORTEZ'S LONG RECORD OF JUDICIAL IMPROPRIETY AND HIS
INCREASINGLY BOLD ACTS OF CORRUPTION

¶8. (C) Tomas Cortez is a Sandinista judge presently serving in Managua's seventh criminal court. In recent years, his name has surfaced regularly in association with judicial irregularities. He has a long record of disregarding the facts and the law, dismissing evidence without explanation and allowing defendants in all manner of criminal cases (everything from drug trafficking, to official corruption and money laundering, to fatal traffic accidents) to go free. Each and every time that Cortez has been publicly accused of any act of wrongdoing, CSJ magistrate Solis has leapt to his defense, using increasingly tortured legal "reasoning" to justify his acts.

¶9. (C) In 1999 and 2000, when Cortez was still a judicial assistant in Managua's seventh criminal court rather than a judge, thirteen revolvers seized by police in several investigations and legally placed in Cortez's hands as evidence simply "disappeared." Cortez was legally responsible for the firearms, but was unable to offer any explanation for what happened to them. However, after their "disappearance" several turned up somehow legally registered to new owners, who claimed that a third party had sold them the guns. The CSJ's disciplinary commission opened an investigation of Cortez's role in the "disappearance" and resale of the firearms, but CSJ magistrate Solis ensured that the investigation never progressed, and that it did not block Cortez's appointment as a full-time criminal court judge in ¶2001.

¶10. (C) In September 2003, Edgard Antonio Vargas Solis, the son-in-law of Humberto Ortega--the former Sandinista Army Commander and the brother of FSLN leader Daniel Ortega--was involved in a traffic accident that killed two men. Although police and prosecutors presented strong evidence that reckless driving on the part of Vargas caused the accident and the deaths of the two men, Judge Cortez ruled that the it was the driver of the other car, one of the dead men, who caused the accident, and absolved Vargas of any wrongdoing. Family members of the deceased and the media accused Judge Cortez of disregarding evidence and of altering police diagrams of the accident.

¶11. (C) In December 2003, Haroldo Montealegre, a notoriously corrupt banker with close ties to ex-President Aleman (and whose visa was revoked for money laundering under INA 212(a)(2)(I) in 2002), came before Judge Cortez in one of his many criminal cases relating to his looting of Banco Mercantil (BAMER). Montealegre's looting of the bank forced

the GON to intervene to bail out defrauded depositors in ¶2001. In this particular case, prosecutors accused Montealegre of fraud, embezzlement, insider trading, and falsification of documents, and had a strong paper trail to document their accusations. However, Cortez dismissed the criminal charges as having been "improperly filed", and ordered the government to return to Montealegre all the assets that it had seized from him when the bank collapsed. This "clean slate" given Haroldo Montealegre by Judge Cortez allowed him to be a candidate for the presidential nomination by the Liberal Constitutional Party (PLC) in 2006.

¶12. (C) In February 2004, William Hurtado, an FSLN militant and former member of the Sandinista state security apparatus, shot and killed journalist and radio personality Carlos Guadamuz in Managua. A former Sandinista himself, Guadamuz had broken with Daniel Ortega and used his radio program to criticize Ortega, Dionisio "Nicho" Marenco (the current Mayor of Managua), and other FSLN leaders on a wide range of issues, including rape charges brought against Ortega by his stepdaughter. Although the involvement of Ortega and Marenco in the Guadamuz murder was never proven in court, the killing was carried out in classic FSLN assassination style and removed a thorn in the side of both men at a time when Marenco was running for the mayor's office. Prior to his killing, Guadamuz had filed a criminal complaint against Ortega and Marenco for making death threats against him. While this criminal case had languished in Judge Cortez's court for four years prior to Guadamuz's murder, two days

after he was killed, Cortez finally took up the case, only to immediately dismiss it because the person who had filed the complaint was now dead. In this way, Judge Cortez helped Ortega and Marenco to clean up a "loose end" in the Guadamuz case and clear the way for Marenco's election as mayor in November 2004.

¶13. (C) In October 2004, one of the many corruption cases brought against Byron Jerez, Arnaldo Aleman's Director of Taxation and his chief partner in corruption (and whose visa was revoked by the Department under INA 212(a)(2)(I) in 2002) came to Judge Cortez's court. This particular case, known locally as "los camionetazos" (roughly translatable as the "Sport Utility Vehicle (SUV) scandal"), involved Jerez's purchase of 23 luxury SUVs for his family using official government credit notes issued by the Directorate of Taxation under his signature. Prosecutors estimated that Jerez robbed the Nicaraguan state of at least USD 750,000 in this case, and they presented the entire paper trail (no less than 13,000 documents), including all of the purchase documents signed by Jerez. Prosecutors had previously seized the vehicles in question from Jerez's residence. However, when the case came to trial, Judge Cortez dismissed all the evidence as "improperly presented", leaving the jury with nothing on which to convict Jerez and his co-conspirators. The jury thus found Jerez not guilty, and he subsequently brought a civil case against the Nicaraguan state, demanding the return of all 23 vehicles. In March 2006, another FSLN judge, Ligia Rivas, ruled in Jerez's favor in the civil case, ordering the GON to return the vehicles to Jerez. Sandinista judges have similarly "absolved" Jerez in several other corruption cases brought against him by the GON, and post has received credible, confidential reports that Jerez paid large bribes to the FSLN campaign finance machine and its judges for these verdicts. Jerez's money reportedly financed much of the FSLN's 2004 municipal election campaign.

¶14. (C) In 2005, when former Managua Mayor Herty Lewites broke with the FSLN and declared that he would run for President on his own since Daniel Ortega had violated FSLN party statutes and declared himself to be the party's candidate for the 2006 presidential elections, the FSLN political machine immediately moved against Lewites and brought numerous politically-motivated charges of corruption against him. When Lewites defended himself and accused the FSLN of defamation and of plotting his murder (the latter in the aftermath of a suspicious incident in which a mysterious vehicle nearly ran down Lewites), party officials brought criminal charges of libel and slander against him. This case went to Judge Cortez, who immediately ruled that there was enough evidence to put Lewites on trial. When other FSLN officials brought still more charges against Lewites, they were ultimately gathered together and heard by a different Sandinista judge, who found Lewites guilty and slapped him with a fine.

¶15. (C) In April and May 2005 the Daniel Ortega launched several weeks of violent protests against the Bolanos administration. These protests by FSLN-affiliated unions, transportation collectives, and student groups were nominally to protest rising gasoline prices, but actually served as a

means to pressure the GON at a time when the FSLN was seeking to force it to accept numerous constitutional reforms that would strip powers from the presidency and transfer them to the National Assembly, where the FSLN has much greater influence. During the violent protests and riots, FSLN agitators attacked police officers and burned police vehicles. Several of those involved in these attacks were arrested and went on trial in July--in Judge Cortez's court. Not surprisingly, Judge Cortez dismissed all the evidence against the FSLN thugs (including police eyewitness testimony and video filmed by local television stations) and found the rioters not guilty on all charges.

¶16. (C) In the fall of 2005, Nicaragua witnessed its most notorious case to date of judges freeing international drug traffickers in return for bribes. This case is still under

investigation, but confidential, credible sources involved in the case have revealed that at least four different Supreme Court magistrates, including Rafael Solis, were involved in a plot to free Colombian drug traffickers and money launderers Leyla Bucardo and Jorge Eliezer Hernandez, along with USD 609,000 that police seized when they arrested the traffickers, in return for large bribes to all the judges involved in the case and for a sizable contribution to FSLN electoral coffers (reftel C). Along with nearly a dozen other judges and lawyers, Judge Cortez played a part in this case. When she was arrested, trafficker Leyla Bucardo carried a falsified Nicaraguan identity document ("cedula"), leading prosecutors to bring charges of document fraud and identity theft against her. While other judges handled the money laundering case, the document fraud and identity theft charges went to Judge Cortez. Cortez dismissed all evidence and found Bucardo not guilty, despite the fact that police and prosecutors presented the fake identity document that Bucardo carried and presented at the time of her arrest (which she did without the consent of the legitimate owner of the identity document) and had a solid case against her.

¶17. (C) During the early morning hours of December 11, 2005, a vehicle owned by the FSLN struck another vehicle and killed two young men in the other car. Eyewitnesses reported that the person driving the FSLN vehicle was Rafael Ortega, Daniel Ortega's son and the director of FSLN-owned television station "Channel 4", but, in order to protect the Ortega family, the FSLN pulled a switch and claimed that another driver was behind the wheel. Police forensic experts and NGOs that investigated the case reported that the substitute driver showed no signs of "seat belt burn" or other injuries consistent with involvement in a serious accident, while Rafael Ortega was subsequently seen in Managua with a cast on his arm and other bandages that clearly could have resulted from involvement in such an accident. However, police and prosecutors, fearing Daniel Ortega's power, refused to investigate the switch or to bring charges against Rafael Ortega. When the case of negligent homicide against the substitute driver came to the court of Judge Cortez in March 2006, family members of the two young men who died tried to persuade the judge to accept the eyewitness evidence against Rafael Ortega and make him a defendant in the case, but Judge Cortez dismissed all the evidence of Rafael Ortega's involvement and of the switch of drivers, and insisted that the case would go forward against only the substitute driver. After dismissing the evidence of Rafael Ortega's involvement, Judge Cortez allowed his substitute judge ("suplente") to finish the case, and the substitute judge found the substitute driver guilty of negligent homicide in April. The families of the two young men killed in the accident announced that they intend to appeal the case to the Inter-American Commission on Human Rights since it is clearly not possible for them to obtain justice in Nicaragua.

¶18. (C) Although post cannot document that Judge Cortez and the FSLN received money from the drug traffickers, money launderers and other corrupt individuals in the cases described above, post does have credible reports that Cortez is part of the FSLN campaign finance machine, and has benefited personally from the arrangement as well. Indeed, his repeated ignoring of the law and the facts and his nonsensical rulings, always to advance whatever political or financial interest the FSLN may have in the litigation before him, offer no real other explanation. Both credible media sources and individuals involved in the cases described here attribute Judge Cortez's actions to bribes and loyalty to the FSLN, but this particular form of corruption is almost impossible to document in Nicaragua. Post has every reason to believe that Judge Cortez is one of a growing number of FSLN magistrates who take bribes in return for using their positions to free international traffickers and corrupt individuals of all sorts without bothering to explain their dubious (or outright illegal) reasoning.

¶19. (C) Tomas Eduardo Cortez Mendoza has used his judicial position to serve the political interests of Daniel Ortega and the FSLN as they seek to undermine the GON and the constitutional order, has helped to free drug traffickers and corrupt former government officials, and has returned their seized money to them, reportedly in return for bribes. All of these corrupt acts have had serious adverse effects on those U.S. interests specified in the Presidential Proclamation as well as U.S. foreign policy priorities highlighted in the Embassy's Mission Program Plan (MPP). The Embassy has encouraged Nicaragua to prosecute officials for corruption and has provided financial and technical support in corruption cases, but almost all of these cases have failed because of the willingness of Judges like Cortez to free corrupt individuals in return for bribes.

¶20. (C) The Embassy has also provided a great deal of resources and training to the Nicaraguan police and military in order to increase their capabilities to intercept, arrest, investigate and prosecute international drug traffickers. This training and support has been increasingly successful, with Nicaraguan law enforcement capturing increasing quantities of drug shipments, drug traffickers, bulk cash smugglers and laundered drug money each year. Unfortunately, the corruption of Tomas Eduardo Cortez Mendoza and other Nicaraguan judges has not only enabled many of the drug traffickers to go free, but also to recover drug money and other drug properties seized by police, undermining the hard work of the police, military and prosecutors and the very rule of law. Although Tomas Eduardo Cortez Mendoza is just one part of Nicaragua's judicial corruption problem, his corrupt actions, and his total impunity, both of which have been thrown in the face of the public for years, have reinforced widespread attitudes that justice can be bought and sold in Nicaragua. Lower court judges like Cortez are increasingly emulating and following the directives of their corrupt Supreme Court (CSJ) counterparts and freeing drug traffickers and their money in return for bribes.

¶21. (C) Stability of Democratic Institutions: The Embassy's top priority is strengthening and consolidating democracy through the development of transparent, accountable and professional governmental institutions, including the judiciary and the Controller General's Office. Our MPP states that, "... abuse of power, corruption and politicization of many state institutions, especially the judiciary, have impeded the consolidation of democracy and economic growth." A criminal justice system subject to political and corrupting influences undermines democracy and has led to serious political instability. Manipulation of the independence of the judiciary encourages and attracts organized criminal organizations, because they realize that bribing judges is a suitable cost of their illegal business in exchange for acquittals and continued impunity. The actions of Tomas Eduardo Cortez Mendoza on behalf of the FSLN, corrupt former government officials and international drug traffickers have contributed directly to the widespread belief in Nicaragua that power and wealth come from political bosses and can be bought and sold. This pattern has undermined confidence in the entire political system and all the institutions of the state. A politicized and corrupted judiciary is the biggest roadblock to the development of a sustainable anti-corruption strategy. When Nicaraguans see top government officials like Cortez enriching themselves and their families over a period of many years and going completely unpunished, they lose faith in all the country's democratic institutions.

¶22. (C) Individuals like Cortez, who have benefited both financially and politically because of their subservience to Ortega and who have been able to spread the benefits of their corruption to family and associates, are widely seen as examples of officials untouchable by the law. The resulting total impunity for corrupt individuals has bolstered the widespread attitude that even a democratically elected government is incapable of providing for the public good. The resulting cynicism has undermined confidence in democracy

and all government institutions and significantly reduced confidence in the administration of justice. Judge Cortez's politically-motivated corruption in support of the FSLN and its leaders has been particularly damaging to the credibility of Nicaragua's institutions, as overwhelming evidence of many of his corrupt acts has been front page news for years--without Cortez having suffered any legal consequences.

His case has demonstrated to the entire country that corrupt officials can commit any corrupt act, and be caught at it,

without suffering any legal consequences as long as they enjoy the support of Ortega or Aleman.

¶23. (C) Thanks to well-placed corrupt cronies like Cortez, Ortega and Aleman retain near total control of all the institutions of the state, except for the presidency. Without co-dependent enablers such as Cortez, Ortega and Aleman would not be able to protect themselves and their cronies from prosecution in Nicaragua for their numerous acts of corruption, nor be able to perpetually threaten to remove President Bolanos from office. Because everyone in Nicaragua, from Ortega and Aleman's co-conspirators, to members of their political parties, to ordinary citizens, knows that the two party bosses have the ability to protect anyone they wish from prosecution, or bring (usually trumped-up) charges against anyone who opposes them, everyone in Nicaragua has a strong incentive to comply with the wishes of the two corrupt ex-presidents.

¶24. (C) Foreign Assistance Goals: One of the top three USG foreign assistance goals in Nicaragua is strengthening democracy. The chief goals of USAID assistance in this area are battling corruption and effecting judicial reform. The actions of corrupt judges like Cortez and his patron, Rafael Solis, have directly damaged progress in both of these areas.

In December 2003, the USG froze USD 49 million of judicial assistance in response to endemic judicial corruption, highlighted by what appeared to be an imminent fraudulent "not guilty" verdict for Arnaldo Aleman, due to backroom dealing between Ortega and the corrupt ex-president. Thanks to corrupt judges such as Cortez, Ortega possesses the means to protect allies from the consequences of their corrupt acts and the power to sanction and silence opponents. This power has enabled him to retain total control of the FSLN caucus in the National Assembly, and he uses this power to negotiate the very future of the country with Aleman.

¶25. (C) Control of the entire court system, from the CSJ to criminal court judges like Cortez, gives Ortega the ability to use nominally legal means to arrest and intimidate anyone he wishes. In a vicious circle that guarantees their political power, Ortega and Aleman use co-dependent cronies such as Cortez in the judiciary and other state institutions to ensure their control of the National Assembly, which, in turn, ensures their control of all the other institutions of the state that are under the Assembly's supervision, including the judiciary, the Contraloria General's Office (Contraloria), and the Supreme Electoral Council (CSE), among others. For as long as Cortez and people like her remain in the judiciary, it will be an integral part of Nicaragua's corruption problem, rather than what it should be, a key institution aiding the government in its anti-corruption fight.

¶26. (C) Moreover, the persistent efforts of Sandinista judges to weaken President Bolanos and/or remove him from office have so damaged the country's stability, that the future of international aid programs in Nicaragua has been called into question. In October 2005, the efforts to remove the President and his ministers from office had gone so far that Deputy Secretary Zoellick informed the Nicaraguan media and the political class that if Ortega, Aleman, and their cronies in the judiciary and other state institutions went so far as to remove the President, the Millennium Challenge Account (MCA) and other USG aid programs would be terminated (reftel D). The Department's 2006 International Narcotics Control Strategy Report (INCSR) highlighted judicial corruption as one of the single greatest factors undermining

anti-drug trafficking efforts in the country.

¶27. (C) International Activity of U.S. Businesses: Corrupt Nicaraguan institutions hamper U.S. investment in Nicaragua and discourage U.S. exporters from establishing agent/distributor relationships. U.S. investors and business-people are reluctant to risk their resources in Nicaragua, knowing they could easily be subjected to the vagaries of a corrupt judiciary or the whims of politicians should they become involved in any commercial dispute, real or trumped up. By shamelessly serving only the interests of Daniel Ortega and the FSLN, sowing corruption in the judiciary, by taking bribes to enable drug traffickers and corrupt former government officials to escape with their proceeds, and by undermining the GON's anti-corruption campaign, Cortez has ensured that U.S. and international business-people continue to regard Nicaragua as a risky investment prospect.

ADDITIONAL INFORMATION REQUIRED FOR FINDING

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¶28. (C) Tomas Eduardo Cortez Mendoza has been informed of the fact that he may be covered by Presidential Proclamation number 7750, under section 212 (f) of the INA.

¶29. (C) Tomas Eduardo Cortez Mendoza has been issued several